

Memorandum

Mr. Gary J. Jugum
Mr. Donald J. Hennessy

Date December 13, 1982

From : John H. Murray

Subject: Annotation 395.2300

Annotation 395.2300 reads as follows:

"A corporation is required to pay the use tax under Section 6094 when it transfers by way of a liquidating dividend to its sole shareholder property purchased tax free for resale. The corporation has not resold the property in the regular course of its business, and therefore has made use of it as use is defined in Section 6009. 7/20/59."

The back-up letter is attached.

The annotation contains the implication that any time inventory acquired under a resale certificate is transferred as a liquidating dividend (or in any occasional sale) that this is a use of the inventory and not a sale in the regular course of business. The transferor is liable for use tax on the purchase price of the inventory.

It is my understanding that where the ex-tax inventory is transferred to the sole shareholder (or to a transferee in any other occasional sale) and the stockholder or transferee gives a resale certificate and holds the inventory for resale in the regular course of business, the transferor is not subject to use tax on that inventory.

I can find no annotation where this is spelled out, although it may be inferred from Regulation 1590 and the Audit Manual. I suggest that this should be in either the regulation or in an annotation.



JHM:at

Attachment

shareholder
as
liquidating dividend

STATE BOARD OF QUALIZATION

395.2300

OFFICE CORRESPONDENCE

PLEASE RETURN TO
LEGAL FILES

Place: Sacramento
Date: July 20, 1959

To: Mr. J. J. Saunders - Unit 2

From: J. J. Delaney

Re

defined in



We are of the opinion that the transfer of property purchased tax free for resale byway of a liquidating dividend to a sole shareholder of a corporation obligates the corporation to pay use tax under Section 6094. We would not distinguish between items of inventory and parts used in building a piece of equipment.

It appears that although the corporation was correct in presenting resale certificates at the time the property was purchased, it has not resold the property in the regular course of its business, but has instead made use of it byway of an occasional sale.

The annotation on the botton of page 505 of the Tax Service could not be checked since the letter had been removed from our files. If it was correctly annotated, the letter would apparently involve only the question of whether the corporation, rather than the individual shareholders, made the particular transfer.

E-81781
(letter not in file)


JJD:rg

(916) 445-5550

February 24, 1983

Dear [REDACTED]

In your letter of January 18, 1983, you state [REDACTED] is a corporation; 100 percent of its capital stock is now owned by [REDACTED] as trustee of a 1981 revocable trust; [REDACTED] is now the sole beneficial owner of the assets of the trust; the lumber company is engaged in the retail sale of building supplies.

It has been proposed that the corporation distribute out all of its assets to the trust in complete liquidation of the corporation and then dissolve. If this proposal is adopted, there will be no interruption in the conduct of the corporation's retail business, which will continue to be conducted outside the corporate form and will apply for a new resale permit. As part of the overall plan, it is contemplated that an entity controlled by members of [REDACTED] family other than [REDACTED] will, subsequent to the liquidation of the corporation, infuse cash into the business and, thereupon, acquire a 5% capital interest in the business. This will be accomplished by the trust's contribution of all of the tangible personal property used in the corporation's retail business to a limited partnership in return for a 95% capital interest therein and the family entity's contribution of cash to the partnership in return for a 5% capital interest therein.

February 24, 1983

On behalf of the corporation, you request our formal binding rulings that the corporation's distribution of its tangible personal property assets to the trust, including both its inventory and non-inventory assets, will constitute a transaction which is exempt from California sales and use tax.

We think that under the above circumstances, upon distribution of the assets of the corporation to [redacted] and dissolution of the corporation, there is no sales or use tax liability imposed upon [redacted] by reason of that transaction. [redacted] as successor, will be liable for any sales or use tax liability of the corporation which has not been paid. See Revenue and Taxation Code Section 6811, and following.

In your letter you state that you would like to be certain that annotation 395.2300 does not apply to this transaction so as to subject the transfer of the inventory of the corporation to use tax upon the corporation's dissolution and transfer of its assets to [redacted].

Under the fact situation given to us, annotation 395.2300 does not apply to the dissolution of the [redacted] and transfer of all of its assets, including inventory to [redacted]. [redacted] should give the corporation a resale certificate in the form prescribed by Regulation 1668. If this is done and any of the inventory acquired from the corporation is not sold in the regular course of business but is used by Mr. Goodman, tax may apply to the withdrawal of items from inventory for use. In other words, the inventory acquired from the corporation will be considered property held or used for sale in the regular course of business, the same as any other inventory acquired under a resale certificate after the dissolution of the corporation.

If you have any further questions, feel free to write to me.

Very truly yours,

John H. Murray
Tax Counsel

JHM:lp

cc: San Francisco - District Administrator

Mr. Donald J. Hennessy - The above letter, I understand, represents what has been our policy for many, many years. I suggest that annotation 395.2300 should either be deleted or limited to instances where the inventory after the dissolution of the corporation shall no longer be held by the successor for sale in the regular course of business.